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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES MICHAEL MENDEZ,

Defendant and Appellant.

G055943

(Super. Ct. No. 16NF2879)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, David A. Hoffer, Judge. Affirmed with directions.

Paul Stubb, Jr., under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler and Julie L. Garland, Assistant Attorneys General, Arlene A. Sevidal, Andrew Mestman, Collette C. Cavalier and Christopher P. Beesley, Deputy Attorneys General, for Plaintiff and Respondent.

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A jury convicted defendant James Michael Mendez of one count of unlawful driving of a vehicle (Pen. Code, § 666.5, subd. (a); Vehicle Code, § 10851, subd. (a); count 1),¹ one count of receiving a stolen vehicle (Pen. Code, § 496d, subd. (a)(1); count 2), one count of false personation (§ 529, subd. (a)(3); count 3), and one count of resisting a peace officer (§ 148, subd. (a)(1); count 4).

The court sentenced defendant to a total of 7 years 8 months in county jail as follows: (1) the middle term of three years on count 1; (2) the middle term of three years on count 2, which was stayed pursuant to section 654; (3) eight months one-third the middle term on count 3; and (4) a concurrent term of six months on count 4. The court also imposed four one-year terms for defendant's prior prison terms (§ 667.5, subd. (b)) and struck two prior prison terms.

On appeal, defendant contends his conviction for false personation is not supported by substantial evidence. While he does not dispute he falsely impersonated another person, he claims there was insufficient evidence he committed an additional act exposing another person to potential criminal liability. He therefore claims his Fourteenth Amendment right to due process was violated. We disagree and find substantial evidence supported the false personation conviction, and, accordingly, we affirm the judgment.

FACTS

In October 2016, Juan Frias, an Anaheim police officer, responded to a reported disturbance at a gas station. When he arrived, he noticed a motorcycle without license plates parked next to a gas pump. The motorcycle's engine was running, and the ignition was damaged. There also was no key in the ignition.

¹ All further statutory references are to the Penal Code unless otherwise stated.

Officer Frias then observed defendant leave the convenience store and walk toward the motorcycle while wearing a motorcycle helmet, motorcycle gloves, and a backpack. Officer Frias asked if the motorcycle belonged to defendant, and defendant said it belonged to his friend who was inside the convenience store. The friend never emerged, and defendant eventually admitted he had ridden the motorcycle from Santa Ana to Anaheim to meet a friend. Defendant also admitted he had a stun gun in his pocket and was under the influence of narcotics.

When Officer Frias asked defendant for his name, he initially identified himself as Rigo. After Officer Frias tried to confirm the name, defendant said his name was Rigoberto and provided the last name of Doman or Donan. He told Officer Frias he did not have any identification with him and said his birth date was June 22.

After another police officer arrived at the scene, Officer Frias asked defendant to comply with a pat-down search to locate the stun gun and any other weapons. Defendant did not comply, and Officer Frias tried to place him in handcuffs. Defendant then broke free and ran away but was taken into custody after a brief pursuit.

Another police officer, James Brown, arrived and transported defendant to jail. When they arrived at the jail, defendant did not have a California identification card and told Officer Brown his name was Rigoberto Loesa Donan. He also said his birth date was May 20, 1980. He was then booked into custody under the name of Rigoberto L. Donan and was fingerprinted during the booking process. Officer Brown discovered defendant's true identity and learned defendant had outstanding warrants for his arrest.

A few days after the incident, the People filed a felony complaint against Rigoberto Loesa Donan. According to the People, they were "aware of [defendant's] true name before the complaint was filed because the complaint included the charge of false personation." At the arraignment hearing that same day, the court ordered the People to amend the complaint to reflect defendant's true name, James Michael Mendez, and true date of birth. The People amended the complaint to correct these errors.

At trial, Officer Brown testified he could not recall if defendant's true identity had been established before defendant was transported to jail, but he testified he discovered defendant's true identity was James Mendez "[d]uring the [booking] process." He also generally testified the fingerprinting process is used to establish a person's true identity. He explained the fingerprinting is "the catchall of everything when . . . the booking process is completed." According to Officer Brown, "it's almost an infallible process."

DISCUSSION

Sufficiency of the Evidence

Defendant does not dispute he falsely impersonated another person, but he contends there was insufficient evidence he "commit[ted] an act separate from the false identification" as required for a false personation conviction under section 529. While the People argue defendant committed the required separate act "[b]y allowing himself to be booked and fingerprinted as Donan," defendant contends this "did not expose [Donan] to liability, but instead actually and ultimately exonerated [Donan]." Because the fingerprinting identification revealed defendant's true identity during the booking process, he argues "the fingerprints . . . would . . . obviate any liability accruing to the impersonated individual." We disagree with defendant's contentions and find the evidence sufficient to support the conviction.

"When a defendant challenges the sufficiency of the evidence on appeal, "the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."'" (*People v. Stacy* (2010) 183 Cal.App.4th 1229, 1234 (*Stacy*).)

Section 529 makes it a criminal offense to falsely personate another person and in that assumed character do “any . . . act whereby, if done by the person falsely personated, he might . . . become liable to any suit or prosecution, or to pay any sum of money, or to incur any charge, forfeiture, or penalty, or whereby any benefit might accrue to the party personating, or to any other person.” (*Id.*, subd. (a)(3).) “The additional act required by section 529 is something beyond, or compounding, the initial false personation to the arresting officer; it must be more than simply providing information regarding the false identity.” (*Stacy, supra*, 183 Cal.App.4th at p. 1235.) But the additional act only requires “that the person falsely personated ‘might’ become liable to any prosecution, or incur any charge, forfeiture, or penalty.” (*Ibid.*) “‘Might’ is nothing more than a possibility.” (*Ibid.*)

Relying on *People v. Chardon* (1999) 77 Cal.App.4th 205 (*Chardon*)² and *Stacy, supra*, 183 Cal.App.4th 1229, the People argue that defendant engaged in an additional act which might have subjected Donan to liability for defendant’s charged crimes. In *Chardon*, the defendant falsely identified herself as her sister after police stopped her for speeding. (*Chardon*, at pp. 208-209.) The defendant also signed her sister’s name on the traffic citation’s promise to appear and placed her own thumbprint on the back of the citation. (*Id.* at p. 209.) The court found the defendant committed an additional act by signing her sister’s name because the defendant “exposed her sister not only to liability for the citation but also to potential criminal liability for failing to appear at the scheduled hearing.” (*Id.* at p. 212.)

In *Stacy, supra*, 183 Cal.App.4th 1229, the defendant used her cousin’s name (*id.* at p. 1233), after she was stopped by police for driving under the influence (*id.* at pp. 1231-1232). At jail, she refused to take a second mandatory breathalyzer test or give a blood sample. (*Id.* at p. 1232.) She also was fingerprinted (*ibid.*), and the

² Abrogated on a different point as explained in *People v. Henry* (2018) 28 Cal.App.5th 786, 796.

fingerprints revealed her true identity (*id.* at p. 1233). The court found the defendant's refusal to complete the testing or blood sample was an additional act that put her cousin "at risk of liability for refusing to submit to and/or complete the chemical testing requirements under Vehicle Code sections 23612 and 23577." (*Id.* at pp. 1235-1236.)

Here, as in *Chardon* and *Stacy*, defendant did more than falsely identify himself as another person. When asked for identification, he gave Donan's name and continued the deception during the booking process by allowing himself to be fingerprinted as Donan. This could have subjected Donan to criminal prosecution had defendant been released without authorities discovering his true identity. Defendant argues his act of pretending to be Donan when he was fingerprinted could not have subjected Donan to liability because the fingerprints revealed defendant's true identity before the booking process was complete. He further claims "there was no evidence [defendant] was ever released prior to arraignment such that a failure to appear could accrue to the impersonated." This misses the point. If Brown had not been able to match defendant's fingerprints with his real name, Donan might have been subject to liability and charged with unlawful driving of a vehicle, receiving a stolen vehicle, and resisting a peace officer. We accordingly find the evidence is sufficient to support the jury's guilty verdict.

Defendant's reliance on *People v. Cole* (1994) 23 Cal.App.4th 1672, *People v. Casarez* (2012) 203 Cal.App.4th 1173, and *People v. Guion* (2013) 213 Cal.App.4th 1426 is misplaced. None of those cases involved an additional act beyond the defendants' false identification. In *Cole*, the defendant confirmed the birth date and middle name of the person he had already claimed to be. (*Cole*, at pp. 1675-1676.) In *Casarez*, the defendant attempted to use his brother's birth certificate after falsely identifying himself as his brother. (*Casarez*, at pp. 1177-1178, 1192.) In *Guion*, the defendant provided a false driver's license in the same name defendant had claimed as her own. (*Guion*, at p. 1435.) These cases bear little resemblance to the instant case

where defendant continued the deception during the booking process and allowed himself to be fingerprinted as Donan. “The additional act required by section 529 is something beyond, or compounding, the initial false personation to the arresting officer; it must be more than simply providing information regarding the false identity.” (*Stacy, supra*, 183 Cal.App.4th at p. 1235.)

Finally, defendant argues the charges initially filed against Donan do not support a finding that defendant committed any additional act. He claims the People “knew or should have known the complaint was being filed in the wrong name” and contends the People improperly argued the following during closing argument:

“And you saw that the defendant impersonated Mr. Donan multiple occasions, including on the video, including when he was with another officer, Officer Brown, and including at the booking process. This is when the defendant’s at his last point before getting in the jail, and, again, Rigoberto Donan. And you heard that Rigoberto Donan was initially charged for this conduct. He was the person who . . . may have been here for these charges that he didn’t commit. And that’s based on the defendant’s statements, based on the defendant’s conduct, based on the fact that the defendant falsely impersonated, so that’s proven.

“Element two, that while falsely impersonating that person the defendant did that if done by the person being falsely impersonated might cause that person to be liable in a criminal prosecution or subject to any charge or penalty. Well, let’s be clear. Again, you heard from Officer Brown himself that the defendant’s actions here actually did cause Rigoberto Donan to initially be charged. And the defendant’s actions might have actually caused Mr. Donan to be subject here, to be sitting here had that fingerprinting process not told the truth. So it’s not because the defendant at some point came clean and said well, no, I’m James Mendez. You don’t look at the finished product. You look at what might cause, might. And that’s based on the defendant’s conduct. So

his false impersonation here might have caused Mr. Donan to be subject to sitting here facing this trial but for the fingerprint intervention.”

The People acknowledge they “elicited testimony that Donan had initially been charged with the crime [citation] and noted that fact in closing argument.” They also concede they were aware of defendant’s true name before filing the complaint and corrected this error at the arraignment. But defendant’s crime was complete when he allowed himself to be fingerprinted under Donan’s name. The fact that initial charges were later mistakenly filed against Donan is irrelevant.

Fines and Assessments

The People contend the abstract of judgment incorrectly lists a court operations/security fee in the amount of \$40 and a criminal conviction assessment in the amount of \$30. They claim the abstract of judgment should be modified to reflect a \$40 court operations/security fee and a \$30 criminal conviction assessment for each of defendant’s convictions. Defendant ignores the issue.

Section 1465.8, subdivision (a)(1) imposes a mandatory \$40 court operations/security fee on every criminal conviction, and Government Code section 70373, subdivision (a)(1) imposes a mandatory \$30 criminal conviction assessment on every criminal conviction. At sentencing, the court appears to have acknowledged these mandatory fees by ordering a “\$70-per-count court operation and facilities fee.” The court’s minute order also indicates the court ordered a \$40 “[c]ourt [o]perations [f]ee per convicted count” and a \$30 “[c]riminal [c]onviction [a]ssessment [f]ee per convicted count” We accordingly direct the court to amend the abstract of judgment to reflect the fees and assessments for each conviction.

DISPOSITION

The clerk of the superior court is ordered to prepare an amended abstract of judgment reflecting a \$40-per-count court operations/security fee and a \$30-per-count criminal conviction assessment and to forward a certified copy to the Department of Corrections and Rehabilitation. The judgment is otherwise affirmed.

IKOLA, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

FYBEL, J.